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ADMITTED TO PRACTICE IN:
ARIZONA, COLORADO, MONTANA,
NEVADA, TEXAS, WYOMING,
DISTRICT OF COLOMBIA

December 16, 2008

Docket Control
Arizona Corporation Commission
1200 West Washington
Phoenix, Arizona 85007

Re: Ridgeline Water Company, L.L.C.
Docket No. W-20589A-08-0173

To Whom It May Concern:

Enclosed for filing in the above-referenced and above-docketed proceeding are the original and thirteen (13) copies of the Reply Brief on behalf of Ridgeline Water Company, L.L.C.

Thank you for your assistance with regard to this matter.

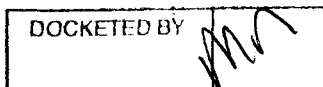
Sincerely,

Lawrence V. Robertson, Jr.

Arizona Corporation Commission

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BEFORE THE ARIZONA CORPORATION COMMISSION

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MIKE GLEASON, Chairman
WILLIAM A. MUNDELL
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KRISTIN K. MAYES
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AZ CORP COMMISSION
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IN THE MATTER OF THE APPLICATION OF)
RIDGELINE WATER COMPANY, L.L.C. FOR) DOCKET NO. W-20589A-08-0173
A CERTIFICATE OF CONVENIENCE AND)
NECESSITY TO PROVIDE WATER SERVICE) APPLICANT'S REPLY BRIEF
TO AND WITHIN AN UNINCORPORATED)
AREA IN PIMA COUNTY, ARIZONA.)

I.

INTRODUCTION

Pursuant to the October 7, 2008 Procedural Order issued by Administrative Law Judge ("ALJ") Belinda A. Martin in the above-captioned and above-docketed proceeding, Ridgeline Water Company, L.L.C. ("Ridgeline") hereby files its Reply Brief. In that regard, and as background, Ridgeline incorporates herein by this reference the Initial Brief filed by Ridgeline in the instant proceeding, inasmuch as the discussion therein set forth remains directly relevant to and dispositive of the two (2) issues which ALJ Martin directed the parties to address.

II.

THE COMMISSION STAFF'S RECOMMENDATION THAT A
CERTIFICATE OF CONVENIENCE AND NECESSITY BE CONTINGENT
UPON THE COMPANY ATTAINING A 70% (EQUITY)/ 30% (AIAC/CAIC)
CAPITALIZATION BY THE END OF ITS FIFTH YEAR OF OPERATIONS
CONTINUES TO BE UNREASONABLE IN THE CIRCUMSTANCES OF THE
INSTANT PROCEEDING

The Commission Staff's Closing Brief is perhaps as (if not more) noteworthy for what it does not do than for what it does.

1 First, during the October 2, 2008 evidentiary hearing, Commission Staff witness Crystal
2 Brown referred to the Commission's Decision No. 70352 (Double Diamond Utilities, Inc.) as
3 precedent which supported the Commission Staff's recommendation that the continued validity
4 of any CC&N granted to Ridgeline should be contingent upon the company attaining a 70%
5 (equity)/ 30% (AIAC/CAIC) capitalization by the end of its fifth year of operations. In its Initial
6 Brief, Ridgeline distinguished the factual circumstances in the Double Diamond Utilities, Inc.
7 case from those present in the instant proceeding, and discussed at length with references to the
8 factual circumstances of this proceeding why the Commission Staff's capitalization
9 recommendation is both inappropriate and unreasonable. In its Closing Brief, the Commission's
10 Staff makes no effort to rehabilitate its previous reliance on Decision No. 70352. Instead, it
11 defaults to reliance upon another decision in another proceeding before the Commission, which
12 is discussed below.

13 Second, the Commission Staff does not address the merits of its capitalization
14 recommendation in relation to the specific factual circumstances of the instant proceeding. In
15 Section II of its Initial Brief, Ridgeline discussed at length why the Commission Staff's
16 capitalization recommendation is both inappropriate and unreasonable when applied to
17 Ridgeline's specific factual circumstances. By way of response, in its Closing Brief the
18 Commission's Staff elected to ignore the evidentiary record in the instant proceeding, and opted
19 to speak in broad generalities. Illustrative of this are (i) the failure of the Commission's Staff to
20 acknowledge that the Commission Staff's debt-to-equity conversion condition will completely
21 extinguish that debt of Ridgeline's parent (Pollux Properties, LLC), which was of concern to the
22 Commission's Staff¹; and, (ii) the failure of the Commission's Staff to acknowledge that
23 Ridgeline intends to contract with Southwestern Utilities Management for the provision of
24 management and operations services, in order to compensate for Ridgeline's lack of previous
25 experience in operating a water utility.²

27 ¹ See Exhibit No. S-2 (September 30, 2008 Supplemental Staff Report) at pages 1, 3 (Recommendation No. 3) and 4
28 (Recommendation No. 14).

² See Tr. 35, L. 1 – Tr. 36, L. 7 and Exhibit No. A-13.

1 In addition, as previously noted in Ridgeline's Initial Brief, the Commission Staff's
2 hypothecated 70% (equity)/ 30% (AIAC/CAIC) capitalization target conveniently ignore(s) the
3 fact(s) that (i) Ridgeline's 46% (equity)/ 54% (AIAC/CAIC) projected capitalization at the end
4 of its fifth year of operations reflects an allocation of responsibility for the manner in which
5 water utilities typically fund their water system infrastructure, when examined in relation to the
6 water system contemplated by Ridgeline's Water System Master Plan³; and, (ii) given the
7 relatively small size of the requested service area (136 single-family residential lots), virtually all
8 of the water system will have been installed before the end of the fifth year of operation. Thus,
9 the only way that the Commission Staff's capitalization could be achieved is by arbitrarily
10 requiring the owners of Ridgeline to fund water system infrastructure that typically would be
11 funded by developers, with the water company's ratepayers paying a return on equity component
12 in their rates for a portion of the water system infrastructure that would otherwise have been
13 funded at no out-of-pocket cost to the company's investors.

14 Third, the Commission's Staff post-hearing reliance upon the Commission's Decision
15 No. 70205 (Beaver Creek Water Company) as support for its capitalization recommendation for
16 Ridgeline is also misplaced. To begin with, the 70% (equity)/ 30% (AIAC/CAIC)
17 recommendation in the Beaver Creek Water case, which the Commission' Staff alludes to in its
18 Closing Brief as a "standard recommendation,"⁴ is hardly the standard. In fact, it appears to be a
19 Commission Staff recommendation that appears now and then, perhaps depending on the
20 Commission Staff member assigned to a given case. In addition, in the Beaver Creek Water
21 case, the Commission rejected the Commission Staff's recommendation of a 70% equity
22 capitalization component, and instead adopted a 40% equity component, which is less than the
23 46% equity that Ridgeline is projecting for itself. Moreover, the 54% AIAC/CAIC capitalization
24 component which Ridgeline is projecting for itself is less than the 60% AIAC/CAIC component
25 which the Commission adopted in Decision No. 70205. ⁵ Thus, Ridgeline's projected
26

27 ³ See Exhibit No. A-7 and Exhibit No. A-8.

28 ⁴ Commission Staff's Closing Brief at page 3, line 21.

⁵ In that regard, it is worth noting that in the Beaver Creek Water case, the Applicant had proposed a 0% (equity)/
100% (AIAC/CAIC) capitalization for the contemplated wastewater system, which is dramatically different from the

capitalization actually achieves a desirable balance of funding sources, and one based upon reality and water utility industry practice.

Finally, as previously noted, Ridgeline's contemplated engagement of Southwestern Utilities Management provides that measure of previous managerial and operating experience which the Commission Staff's believes was influential in the Beaver Creek Water case.⁶

Accordingly, for the reasons discussed above, Ridgeline submits that the Commission Staff's recommendation that a CC&N for Ridgeline be contingent upon the company attaining a 70% (equity)/ 30% (AIAC/CAIC) capitalization by the end of its fifth year of operations continues to be unreasonable in the circumstances of the instant proceeding, and should therefore be rejected.

III.

THE ISSUANCE OF AN ORDER PRELIMINARY IN ADVANCE OF A CERTIFICATE OF CONVENIENCE AND NECESSITY CONTINUES TO BE NEITHER NECESSARY NOR APPROPRIATE, WHEN EXAMINED IN THE CIRCUMSTANCES OF THE INSTANT PROCEEDING AND THE LANGUAGE OF A.R.S. § 40-282(D)

In its Closing Brief, the Commission's Staff makes the following statement:

"According to Ridgeline [in its Initial Brief], the common theme seems to be Order Preliminary are only appropriate in 2 circumstances; where there are unique circumstances or a company has requested an Order Preliminary or where there are unresolved issues that are beyond the control of the applicant. Staff would strongly disagree with interpreting any Commission order as a limitation of the authority of the Commission to act as it deems appropriate to protect the public interest in the exercise of its statutory authority." [Commission Staff Closing Brief at page 4, line 25 - page 5, line 2] [emphasis added]

46% (equity)/ 54% (AIAC/CAIC) capitalization contemplated by Ridgeline. See Decision No. 70205 at page 9, lines 11-14.

⁶ In that regard, it should be noted that the Applicant in the Beaver Creek Water case had no previous experience operating a wastewater system, and it hired a certified operator to address that situation. See Decision No. 70205 at page 11, lines 16-17. As previously noted, Ridgeline proposes to retain Southwestern Utilities Management, a well-qualified and experienced certified operator, for precisely the same reason!

1 The Commission Staff's characterization of Ridgeline's position is inaccurate, and the
2 Commission Staff's postulation of an "indignant" strawman is misplaced.

3 More specifically, in Section III of its Initial Brief, Ridgeline analyzed the previous
4 Commission decisions on Order(s) Preliminary which ALJ Martin had requested that the parties
5 address in their briefs⁷, and it discussed how the factual circumstances surrounding those cases
6 differed significantly from those circumstances surrounding the instant proceeding. In that
7 regard, it is worth noting that the Commission's Staff did not take issue with any of Ridgeline's
8 analyses of the previous Commission decisions discussed. However, at no time did Ridgeline
9 state that the authority of the Commission was limited in the manner that the Commission's Staff
10 now endeavors to attribute to Ridgeline. Rather, Ridgeline simply contrasted the cases discussed
11 with the present one; and, it noted, as the Commission's own decisions and ALJ Martin have also
12 observed, that "order preliminaries are not used that frequently."⁸

13 Perhaps in implicit recognition that it cannot find support for its position in the previous
14 Commission decisions identified by ALJ Martin, and discussed by Ridgeline, the Commission's
15 Staff cites the Commission's Decision No. 69399 (Empirita Water Company, LLC) as support
16 for its position. However, in the Empirita proceeding, the Applicant did not take issue with the
17 Commission Staff's recommendation of an Order Preliminary⁹. Thus, in that case the question
18 of whether or not an Order Preliminary was appropriate in the circumstances was not addressed
19 on the merits by either the parties or the Commission. As a consequence, Decision No. 69399
20 does not represent any meaningful or informed precedent for purposes of the instant proceeding.

21 Similarly, the final line of argument on this issue in the Commission Staff's Closing Brief
22 completely fails to address the issue. The previous Commission decisions addressed by
23 Ridgeline in Section III of its Initial Brief were influenced by the circumstances surrounding the
24 application(s) in question, and not the fact that the applicant(s) held existing CC&Ns. The
25 Commission Staff's endeavor to suggest that an Order Preliminary should be issued in this
26

27 ⁷ See Tr. 224, L. 6 – Tr. 227, L. 25.

28 ⁸ Tr. 224, L. 6-11 and Tr. 225, L. 13-14.

⁹ Whereas, in the instant proceeding, Ridgeline does.

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1 proceeding simply because Ridgeline currently does not possess a CC&N is specious reasoning
2 at best, if not the proverbial "red herring."

3 IV.

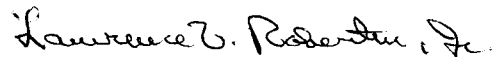
4 CONCLUSION

5 For the reasons discussed in Sections II and III above, Ridgeline believes that the
6 questions (or issues) which ALJ Martin requested be briefed should be resolved as follows:

- 7 1. The Commission Staff's recommendation that a CC&N for Ridgeline be contingent
8 upon Ridgeline attaining a 70% (equity)/ 30% (AIAC/CAIC) capitalization by the
9 end of its fifth year of operations is not reasonable in the circumstances of the instant
10 proceeding, and therefore should not be adopted.
- 11 2. The issuance of an Order Preliminary, in advance of a CC&N in this proceeding, is
12 neither necessary or appropriate under A.R.S. § 40-282 and the specific
13 circumstances surrounding the instant proceeding.

14
15 Dated this 16th day of December 2008.

16 Respectfully submitted,

17 

18 Lawrence V. Robertson, Jr.
19 Attorney for Ridgeline Water Company, L.L.C.

20
21 The original and thirteen (13) copies of the
22 foregoing Reply Brief will be hand-delivered on
the 17th of December 2008 to:

23 Docket Control
24 Arizona Corporation Commission
25 1200 West Washington
Phoenix, Arizona 85007

26 A copy of the foregoing Reply Brief
27 will be emailed or mailed on the 17th day
28 of December 2008 to:

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